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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			BOMBERG, KENNETH	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/058,401

Applicant(s)

DE LAFORCADE, VINCENT

Examiner

Kenneth Bomberg

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-302 is/are pending in the application.
- 4a) Of the above claim(s) 18, 51, 81, 114, 147, 177 and 193-292 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-50, 52-80, 82-113, 115-146, 148-176, 178-192 and 293-302 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 97-113, 115-129, 130-146, 148-160 and 293-302 are rejected under 35

U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In Reference to Claims 97 and 130

The claims have been amended to differentiate from the prior art by the inclusion of: “the dip tube having an opening at a free end of the dip tube, the opening being the only inlet for the flow of product into the dip tube” (emphasis added). The specification explicitly defines a dip tube (13) having a free end (14), as best illustrated in Fig. 4. Further Fig. 4 depicts an opening at the free end (14). There is no disclosure of the dip tube having (or not having) any other inlet openings; the specification is silent with respect to the absence of any additional openings. Although the figures depict a single inlet opening, the figures cannot be relied upon for support of negative limitation when the limitation is not inherent.

To illustrate the position above, the following discussion is presented as an analogy demonstrating the point. Clearly the figures fail to show any number of details, such as a passage between the dip tube (13) and the outlet orifice (7), nonetheless logic would dictate to one having ordinary skill in the art that such a passage is present, it's absence in the drawings would not support a negative limitation as to its absence just because the drawings fail to depict such a passage. In summary, there is no support for the exclusion of further inlets from the dip tube explicitly, implicitly, or inherently in the application as originally filed.

In Reference to Claims 293-302

The inclusion of the dip tube being "unperforated" and the opening the free end of the dip tube "being the only inlet". Is not supported by the disclosure as originally filed for the reasons as explained above.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 7-10, 13, 20, 21, 29-33, 34, 35, 40-43, 46, 53, 54, and 62-64 are rejected under 35 U.S.C. 102(b) as being anticipated by Gueret (5,505,338).

In figures 1-3 and the disclosure associated with the identified reference numbers, Gueret teaches (Inter alia) of a:

A device for dispensing a product (1), comprising: a container (4); a flexible-walled pouch (2) inside the container, the flexible-walled pouch comprising an interior; a product contained in the interior of the pouch; a dip tube (27) extending in the interior of the pouch, the dip tube having a free end (30) located substantially at a mid-point of an axial height of the pouch; an airless pump (8) in fluid communication with the interior of the flexible-walled pouch via the dip tube; and at least one passage (6) configured to allow air entry into the container and outside of the pouch, wherein pressure in the interior of the pouch, at least prior to first use of the device, is less than or substantially equal to atmospheric pressure; wherein the flexible pouch comprises a substantially non-elastically deformable material; wherein the device is configured so that substantially all of the product contained in the pouch is dispensed via the airless pump regardless of whether the device is oriented in a head-up position or a head-down position.

According to the independent claims identified above, further with respect to the dependent claims note:

Dispensing head (9), dispensing orifice (21), and use with cosmetic products
(column 1, lines 22-23).

5. Claims 97, 98, 101-106, 109, 116-118, 121, 122, 124-129, 130, 131, 134-139, 142, 149-151, 154, 155, 157-160, 299, and 300 are rejected under 35 U.S.C. 102(b) as being anticipated by Stone (4,322,020).

In figure 2 and the disclosure associated with the identified reference numbers, Stone teaches (Inter alia) of a:

A device for dispensing a product (Fig. 2), comprising: a container (26); a flexible-walled pouch (9) inside the container, wherein the flexible pouch comprises a substantially non-elastically deformable material, and the flexible-walled pouch comprising an interior; a product contained in the interior of the pouch; a dip tube (12) extending in the interior of the pouch; an airless pump (11) in fluid communication with the interior of the flexible-walled pouch via the dip tube; and at least one passage (27) configured to allow air entry into the container and outside of the pouch, wherein pressure in the interior of the pouch, at least prior to first use of the device, is less than or substantially equal to atmospheric pressure, and wherein the device is configured so that substantially all of the product contained in the pouch is dispensed via the airless pump regardless of whether the device is oriented in a head-up position or a head-down position.

According to the independent claims identified above, further with respect to the dependent claims note:

Outer container of rigid polystyrene (Example 4), flexible pouch of polyethylene or polypropylene (column 4, lines 9-17), pump thread connection (unnumbered Fig. 3, pump closure 13), dispensing head (16), dispensing orifice (17), and use with cosmetic products (column 1, lines 13-16).

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6. Claims 97-99, 103-106, 116-117, 124-125, 128, 129, and 299 are rejected under 35 U.S.C. 102(b) as being anticipated by Meshberg (4,008,830).

In figures 1-3 and the disclosure associated with the identified reference numbers, Meshberg teaches (Inter alia) of a:

A device for dispensing a product (Fig. 1), comprising: a container (11); a flexible-walled pouch (13) inside the container, wherein the flexible pouch comprises a substantially non-elastically deformable material, and the flexible-walled pouch comprising an interior; a product contained in the interior of the pouch; a dip tube (37) extending in the interior of the pouch having only a single inlet into the tube; an airless pump (15) in fluid communication with the interior of the flexible-walled pouch via the dip tube; and at least one passage (17) configured to allow air entry into the container and outside of the pouch, wherein pressure in the interior of the pouch, at least prior to first use of the device, is less than or substantially equal to atmospheric pressure, and wherein the device is configured so that substantially all of the product contained in the pouch is dispensed via the airless pump regardless of whether the device is oriented in a head-up position or a head-down position.

According to the independent claims identified above, further with respect to the dependent claims note:

Outer container of rigid container and the pouch can be made of plastic (column 1, lines 50-61), the pouch may be fixed longitudinally to an interior of the container at a fixing region (see column 2, lines 46-48), the pump is mounted by crimping (see column 4, lines 1-5), the dip tube is not perforated (see column 4, lines 45-52).

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7. Claims 130-132, 134-146, 151, 152-154, 156, 157, 161-162, 164-176, 181-184, 187, and 191-192 are rejected under 35 U.S.C. 102(b) as being anticipated by Kogyosho (JP 09077136 A)¹.

In figures 4-5 and the associated English language translation associated with the identified reference numbers, Kogyosho teaches (Inter alia) of a:

A device for dispensing a product (1), comprising: a container (11); a flexible-walled pouch (12) inside the container, the flexible-walled pouch comprising an interior; a product contained in the interior of the pouch; a dip tube extending in the interior of the pouch; an airless pump (Detailed Description § [0024]), in fluid communication with the interior of the flexible-walled pouch via the dip tube; and at least one passage (14) configured to allow air entry into the container and outside of the pouch, wherein pressure in the interior of the pouch, at least prior to first use of the device, is less than or substantially equal to atmospheric pressure, and wherein the device is configured so that substantially all of the product contained in the pouch is dispensed via the airless pump regardless of whether the device is oriented in a head-up position or a head-down position.

Further with respect to the dependent claims note:

Kogyosho teaches a plurality of “N” fixing regions (13A-D), pouch contacting dip tube (Detailed Description § [0029-0031]), the pouch having four sides (Figs. 4-5), polyethylene outside layer (Detailed Description § [0015]), the pouch connected to the

¹ With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer generated translation. An English language translation (human) of the entire document is attached

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container with a resin (Detailed Description § [0045]), and threading for pump attachment (Fig. 3, 3).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-17, 22-33, 34-50, 53-64, 65-79, 80, 83-96, 161-176, and 179-192 rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyosho (JP 09077136 A)² in view of Gueret (5,505,338).

In figures 4-5 and the associated English language translation, Kogyosho teaches (Inter alia) of a device for dispensing a product (1) comprising a container (11), a flexible walled pouch (12) inside the container, a product in the pouch, a dip tube extending in the interior of the pouch, a pump (Detailed Description § [0024]), and at least one passage (14) substantially according to the claims.

Kogyosho, is silent as to the particulars of the dip tube. Gueret also teaches in figures 3-4 and the accompanying disclosure (Inter alia) of a device for dispensing a product (1) comprising a container (4), a flexible walled pouch (2) inside the container, a product in the pouch, a dip tube (27 and column 4, lines 27-47) extending into and having

a free end located substantially at a mid point of an axial height of the interior of the pouch, a pump (8), dispensing head (9), and at least one passage (6) substantially according to the claims.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the specific pump (8) and dip tube (27) of Gueret for the nonspecific pump and dip tube and pump of the dispensing device of Kogyosho in order to prevent the walls of the flexible pouch from bonding against one another and trapping a volume of the product as explicitly taught by Gueret.

Further with respect to the dependent claims note:

Kogyosho teaches a plurality of "N" fixing regions (13A-D), pouch contacting dip tube (Detailed Description § [0029-0031]), the pouch having four sides (Figs. 4-5), polyethylene outside layer (Detailed Description § [0015]), and threading for pump attachment (Fig. 3, 3).

In Reference to Claims 24, 27, 57, 60, 90, and 186

Kogyosho teaches the exemplary use of ADOMA™ but indicates that other adhesives may be used (MEANS § [0015-0017]). It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted ADMER™ for ADOMA™ as an adhesive in the product dispensing device since Kogyosho suggests the use of alternative adhesives, and since ADMER™ is commercially known for the purpose of bonding a container inner and outer layers³.

² With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer generated translation. An English language translation (human) of the entire document is attached.

³ See Kobayashi et al. (5,711,454) column 7, lines 6-9 in support of this assertion, these claims have been treated as best interpreted in view of the improper use of a Trademark in the claim.

In Reference to Claims 26, 59, 89, and 185

Kogyosho teaches the use of nylon for the pouch rather than polypropylene and polyethylene. Gueret teaches the use of polypropylene and polyethylene for the pouch due to their very small extent of shape memory to facilitate complete emptying of the pouch (column 4, line 60 to column 5, line 17). It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the nylon bag material of Kogyosho with the polypropylene and polyethylene pouch material of Gueret to facilitate complete emptying of the pouch as explicitly taught by Gueret.

In Reference to Claims 30, 31, 63, 64, 93, 94, 189, and 190

Kogyosho teaches the dispensing of a product from the pouch but does not specify the product. Gueret teaches the dispensing of a cosmetic product from the pouch (column 1, lines 20-23). It would have been obvious to one having ordinary skill in the art at the time of the invention to have contained a cosmetic product in the dispensing device of Kogyosho as modified by Gueret because Gueret teaches that cosmetic products can be advantageously dispensed from such devices for dispensing products.

In Reference to Claims 53-54, 83-84, and 179-180

Kogyosho teaches one or more air passages (14) and suggests a variety of locations for the passages (Detailed Description § [0013]) but does not clearly specify them being in the bottom of the container. Gueret teaches air passages being in a bottom of the container (6, column 3, lines 59-60). It would have been obvious to one having ordinary skill in the art at the time of the invention to have located the air passages on the bottom of the container because Kogyosho specifies alternative locations for air passages

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and because the location of the air passage is not critical and because Gueret teaches that the bottom location is a known equivalent location in the art for air passage.

10. Claims 101, 102, 107, 108-113, 118-121, 123, 301, and 302 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meshberg (4,008,830) in view of Kogyosho (JP 09077136 A)⁴.

As noted above, Meshberg teaches of a device for dispensing product substantially according to the claims, but teaches of using a spot of adhesive to attach the pouch to the container (see column 4, lines 46-48) rather than the plurality of fixing regions along the entire height of the pouch and a square cross section of the pouch according to the claims. Kogyosho in Figs. 4-5, and the associated description teaches of the claimed arrangement in order to prevent bending of the suction tube and associated negative operation of the pump (see § [0031]).

It would have been obvious to one having ordinary skill in the art to have substituted the container arrangement having a single spot of adhesive of Meshberg for the arrangement of Figs. 4-5 of Kogyosho in order to prevent the undesirable bending of the suction tube as explicitly taught by Kogyosho.

11. Claims 1, 19, 34, and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over Ellion et al. (5,497,911) in view of Gueret (5,505,338).

In figures 1-2 and the associated disclosure, Ellion et al. teaches (Inter alia) of a device for dispensing a product (1) comprising a container (7), a flexible walled pouch (5) inside the container, a product in the pouch, a dip tube extending in the interior of the pouch (3), a pump (2), and at least one passage (7a) substantially according to the claims.

Ellion et al., is silent as to the particulars of the dip tube. Gueret also teaches in figures 3-4 and the accompanying disclosure (Inter alia) of a device for dispensing a product (1) comprising a container (4), a flexible walled pouch (2) inside the container, a product in the pouch, a dip tube (27 and column 4, lines 27-47) extending into and having a free end located substantially at a mid point of an axial height of the interior of the pouch, a pump (8), dispensing head (9), and at least one passage (6) substantially according to the claims.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the specific pump and dip tube (27) of Gueret for the pump and dip tube of the dispensing device of Ellion et al. because a perforated tube used by Ellion et al. is an art known equivalent for the claimed dip tube as explicitly taught by Gueret (column 4, lines 40-43).

12. Claim 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyosho (JP 09077136 A)⁵ and Gueret (5,505,338) as applied to claim 65 above, and further in view of Segati (Des. 338,828).

⁴ With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer generated translation. An English language translation (human) of the entire document is attached.

⁵ With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer generated translation. An English language translation (human) of the entire document is attached.

Kogyosho and Gueret together suggest a device for dispensing product substantially according to claim 82, but do not suggest per se, the cross sectional area defined by the pouch is at a maximum substantially at the mid-point of the axial height and decreases gradually away from the midpoint. Both Kogyosho and Gueret suggest containers of alternative shapes. Segati suggests a device for dispensing product having a cross sectional area defined by the device being at a maximum substantially at the mid-point of the axial height and decreases gradually away from the midpoint. This is suggested for purposes of aesthetics. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the design shape of Segati into the dispensing device of Kogyosho and Gueret to improve the aesthetics as taught by Segati. When the teaching of Segati is applied, the inner pouch would necessarily conform to the shape of the outer container according to the teachings of Kogyosho, and would consequently meet the claim limitation.

13. Claims 97, 115, 130, 133, 148, and 300 rejected under 35 U.S.C. 103(a) as being unpatentable over Ellion et al. (5,497,911) in view of Meshberg (4,008,830).

In figures 1-2 and the associated disclosure, Ellion et al. teaches (Inter alia) of a device for dispensing a product (1) comprising a container (7), a flexible walled pouch (5) inside the container, a product in the pouch, a dip tube extending in the interior of the pouch (3), a pump (2), and at least one passage (7a) substantially according to the claims. Ellion et al., in the embodiment of Fig. 1 discloses placing entry ports (4) along its length in order to facilitate emptying of the pouch (5).

Meshberg also teaches in figure 1 and the accompanying disclosure (Inter alia) of a device for dispensing a product (Fig. 1) comprising a container (11), a flexible walled pouch (13) inside the container, a product in the pouch, a dip tube (37) extending into the interior of the pouch, a pump (15), dispensing head (35), and at least one passage (17) substantially according to the claims. Meshberg also explicitly teaches an alternative to a dip tube having multiple entry ports is a dip tube having a fluted or irregularly patterned external surface to facilitate emptying of the bag as it collapses (column 4, lines 49-52).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the specific dip tube (37) of Meshberg having a fluted or irregularly patterned external surface for the dip tube having entry ports along its length of the dispensing device of Ellion et al. because a perforated tube used by Ellion et al. is an art known equivalent for the claimed dip tube as explicitly taught by Meshberg. Also, the fluted tube of Meshberg would have the advantage of preventing the pouch from trapping fluid continuously along the entire length of the dip tube.

14. Claim 178 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyosho (JP 09077136 A)⁶ in view of Segati (Des. 338,828).

Kogyosho suggest a device for dispensing product substantially according to claim 178, but does not suggest per se, the cross sectional area defined by the pouch is at a maximum substantially at the mid-point of the axial height and decreases gradually away from the midpoint. Kogyosho suggests containers of alternative shapes. Segati

suggests a device for dispensing product having a cross sectional area defined by the device being at a maximum substantially at the mid-point of the axial height and decreases gradually away from the midpoint. This is suggested for purposes of aesthetics. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the design shape of Segati into the dispensing device of Kogyosho to improve the aesthetics as taught by Segati. When the teaching of Segati is applied, the inner pouch would necessarily conform to the shape of the outer container according to the teachings of Kogyosho, and would consequently meet the claim limitation.

15. Claims 1, 293, 294, 34, 295, 296, 65, 297, 298, 97, 100, 299, 130, 133, and 300 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wild. (5,056,685) in view of Meshberg (4,008,830).

In figures 1-2 and the associated disclosure, Wild teaches (Inter alia) of a device for dispensing a product (Fig. 1) comprising a container (10), a flexible walled pouch (1) inside the container, a product in the pouch, a dip tube extending in the interior of the pouch (3) having a free end located substantially at a mid-point of an axial height of the pouch, and a pump (2). Wild does not teach of an air passage for entry of air into the container outside the pouch.

Meshberg teaches to include passages (17) in a container containing a pouch in order to permit outside air pressure to act on the pouch causing it to collapse when liquid

⁶ With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer

is withdrawn through the dip tube. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the passages of Meshberg in the container of Wild in order to permit outside air pressure to act on the pouch causing it to collapse when liquid is withdrawn through the dip tube as taught by Meshberg.

In Reference to Claim 65 and claims dependent thereon

Wild further fails to teach of the pouch being fixed longitudinally to an interior wall of the container along at least one fixing region. Meshberg further teaches to use a spot of adhesive to attach the pouch to the bottom of the container thereby fixing the bag longitudinally to an interior wall of the container in order to prevent stopping of the dip tube (see column 4, lines 44-48).

It would have been obvious to one having ordinary skill in the art to have included the spot of adhesive to attach the pouch of Wild to the bottom of the container thereby fixing the bag longitudinally to an interior wall of the container in order to prevent stopping of the dip tube as taught by Meshberg.

Response to Arguments

16. Applicant's arguments filed 3 September 2004 have been fully considered but they are not persuasive.

Applicant argues on page 48 that Gueret fails to disclose or suggest a dip tube having a free end located substantially at a mid point of an axial height of a pouch.

Applicant acknowledges the examiners identification of the anti trapping members (27)

as being the corresponding structure to the relevant claim limitations but takes issue of the characterization of the anti trapping members being a “dip tube”. A review of the specification does not reveal an explicit definition of the claimed “dip tube”, consequently, the broadest reasonable interpretation of the claim and the ordinary meaning of the term is used in interpreting the claim. In column 4, lines 27-48, Gueret teaches of a dip tube (27) as claimed by the applicant. The anti trapping member (27) is a “tube” having fins which (28) form “a passage for the product” (lines 36-37) and includes a lower “free” end (lines 42-43), consequently Gueret discloses a tube. Further the tube of Gueret “dip[s]” into the container. Gueret further explicitly teaches of an alternative anti trapping member in the form of a “perforated tube” (41) further providing evidence that the disclosed anti trapping member is fairly characterized as dip tube. The fact that the explicitly disclosed dip tube embodiments of Gueret are perforated or include slits does not exclude them from being fairly characterized as being a “dip tube” and applicant has failed to provide any compelling argument or evidence to overcome this position. Consequently, applicant’s arguments are a conclusory statement rather than an actual argument. The use of the term “dip tube” to characterize an analogous anti trapping member to that of Gueret is further evidenced by Credle (US 4,286,636) which depicts perforated or slitted tubes as being dip tubes. Consequently, contrary to applicant’s position, evidence supports the broader interpretation of the term “dip tube” encompassing the anti trapping member of Gueret.

With respect to the arguments concerning Kogyosho, attached is a copy of the computer generated translation as well as a human translation (per footnote 1 in the

examiners action and as further requested by applicant). Applicant first argument on page 49 is that Gueret fails to teach the claimed “dip tube”. As discussed above, Gueret teaches of a “dip tube” per the claim limitations. Applicant’s second argument is that there is not motivation or suggestion to combine the references and that [impermissible] hindsight has been used to combine the references. The argument is solely based on the anti trapping members (27) of Gueret not being a “dip tube”. As discussed above, the anti trapping members (27) of Gueret are a type of “dip tube”, and as acknowledged by applicant, Gueret explicitly teaches of their use to prevent the walls of the flexible bag from bonding against one another. Applicants further arguments concerning 65 and 161 are also based on the same rational. Applicant’s arguments are therefore not convincing.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is 571-272-4922. The examiner can normally be reached on Monday, Tuesday, Thursday and alternative Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.B.


KENNETH BOMBERG
PRIMARY EXAMINER